

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:

INTELSAT, LTD.

Petition for Declaratory Ruling that
Intelsat, Ltd. Complies With Section
621(5)(F) of the ORBIT Act

IB Docket No. 05-18

INTELSAT, LTD.'S RESPONSE TO SUBMISSION OF LARRY POSTOL

Intelsat, Ltd. (“Intelsat”), by its attorneys, hereby replies to the comment submitted to the Federal Communications Commission (“FCC” or “Commission”) on February 14, 2005 by Larry Postol (the “Postol Submission”) in the above referenced matter.¹ Mr. Postol is an attorney representing plaintiffs in a class action suit against Intelsat concerning retiree medical insurance.² The Postol Submission concerns a matter unrelated to Intelsat’s Petition for Declaratory Ruling³ (“Petition”) and attempts to draw the FCC into a dispute pending before a U.S. district court concerning an alleged breach of contract. For the reasons set forth below, Intelsat respectfully requests that the Commission disregard the Postol Submission as irrelevant and completely without legal merit.

The dispute in the *Acosta* litigation concerns the enforceability of certain alleged commitments set forth in a Resolution of the Board of Governors of Intelsat’s

¹ Comment of Larry Postol, IB Dkt. No. 05-18 (filed Feb. 14, 2005).

² See *Acosta v. Intelsat Global Service Corp.*, No. 1:04-cv-1618 (D.D.C. filed Sept. 20, 2004). The *Acosta* case is one of two nearly identical class action suits arising from the same facts. The other is *Morales v. Intelsat Global Service Corp.*, No. 1:04-cv-01044 (D.D.C. filed June 25, 2004). Both cases are pending before Judge James Robertson.

³ Intelsat, Ltd., Petition for Declaratory Ruling that Intelsat, Ltd. Complies with Section 621(5)(F) of the ORBIT Act, IB Docket 05-18 (filed Dec. 23, 2004).

intergovernmental organization predecessor – the International Telecommunications Satellite Organization (“INTELSAT”). The issues before the court in *Acosta*, therefore, relate to an alleged breach of contract claim and are completely unrelated to the issues before the Commission in this proceeding. Because the Supreme Court has made clear that “the Communications Act [does not] give authority to [the] Commission to determine the validity of contracts between licensees and others,”⁴ the FCC “is not the proper forum to raise private contractual issues.”⁵ The Commission should reject Mr. Postol’s transparent attempt to use the agency’s processes to gain leverage in an unrelated judicial proceeding.

Mr. Postol attempts to create a nexus to this proceeding by urging the Commission to find that Intelsat “has not completed the transition to privatization.”⁶ The Petition, however, does not ask the FCC to declare that Intelsat’s privatization is “complete.”⁷ It seeks a ruling only on the specific issue of whether Intelsat is in compliance with Section 621(5)(F) of the Open-Market Reorganization for the Betterment of International Telecommunications Act (“ORBIT Act” or “Act”)⁸ as a result of the consummation of its transaction with Zeus Holdings Limited (the “Zeus Transaction”). Section 621(5)(F) provides that Intelsat may forego an initial public offering and public listing of securities if it otherwise achieves

⁴ *Regents of University System of Georgia v. Carroll*, 338 U.S. 586, 602 (1950).

⁵ *Loral Satellite, Inc. (Debtor-in-Possession) and Loral SpaceCom Corporation (Debtor-in-Possession), Assignors, and Intelsat North American, LLC, Assignee, Applications for Consent to Assignments of Space Station Authorizations and Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934*, Order and Authorization, 19 FCC Rcd 2404, 2420 (2004), *as amended*, Supplemental Order, 19 FCC Rcd 4029 (2004).

⁶ Postol Submission at 1.

⁷ Indeed, the full Commission has already concluded that the former intergovernmental organization, INTELSAT, had “privatized”. See, e.g., *Intelsat LLC, Request for Extension of Time Under Section 621(5) of the ORBIT Act*, Memorandum Opinion and Order, 16 FCC Rcd 18185, 18185 (2001).

⁸ Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. No. 106-180, 114 Stat. 48 (2000), *as amended*, Pub. L. No. 107-233, 116 Stat. 1480 (2002), *as amended*, Pub. L. No. 108-228, 118 Stat. 644 (2004), *as amended*, Pub. L. No. 108-371, 118 Stat. 1752 (2004) (“ORBIT Act”).

substantial dilution of former signatory ownership, eliminates former signatory control, and has no intergovernmental organization ownership.⁹ Determining whether the consummation of the Zeus Transaction fulfills those three specific statutory requirements calls for an evaluation of concrete, empirical facts relating to the requirements. Because the FCC is not required to determine whether Intelsat's transition to privatization is "completed," the Postol Submission has no relevance to the instant proceeding.

Even assuming for the sake of this response that Intelsat's Petition could be construed as seeking a ruling that its privatization is "complete", the Postol Submission is without merit. Its only argument appears to be that Intelsat is invoking the immunities of INTELSAT as one of its defenses in the *Acosta* suit. The *Acosta* plaintiffs' contract claim is based on the theory that INTELSAT was legally bound to provide certain insurance benefits to its retirees, and that Intelsat is a legal "successor" to that alleged obligation.¹⁰

Without conceding successorship as a matter of law, Intelsat defended against the contract claim by relying on well-settled law that to the extent a legal successor inherits its predecessor's liabilities, the successor also inherits in equal measure any defenses that the predecessor may have had against those liabilities.¹¹ That is the context in which Intelsat has asserted the immunities defense. In doing so, Intelsat made no representations about the current status of its "transition to privatization."¹²

⁹ ORBIT Act, § 621(5)(F).

¹⁰ See, e.g., *Acosta* Complaint, ¶ 38; *Acosta* Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendants' Motion to Dismiss at 8-9 (included in attachments to the Postol Submission).

¹¹ See *Acosta* Memorandum in Support of Defendants' Motion to Dismiss at 21-23 and cases cited therein (included in attachments to the Postol Submission); see also *General Electric Capital Corp. v. Grossman*, 991 F.2d 1376 (8th Cir. 1993) (privatized governmental entity retains immunity post-privatization for claims based on conduct of pre-privatization governmental entity).

¹² Postol Submission at 1.

For the reasons set forth herein, Intelsat requests that the Commission disregard the Postol Submission as irrelevant and without legal merit.

Respectfully submitted,

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